of the obligations imposed by a confidential relation, and the bill was dismissed. *Marvin* v. *Elwood*, 11 Paige 365. The opposite result was reached in the same state in a similar case where the trust was not constructive but express. *Richards* v. *Salter*, 6 Johns. Ch. 445. If the rule in question rests on identity of obligation it would not exclude an interpleader in the principal case. If it rests on anything else it is artificial, contradicted by a number of cases, and not likely to be generally followed.

The most troublesome objection to an interpleader in the principal case remains to be considered: the objection that if Coleman's claim was correct the vendee was a tort-feasor. It has been held in several cases that where one of the adverse claims is based on the commission of a tort by the stakeholder, the interpleader cannot be allowed. *Shaw* v. *Coster*, 8 Paige 339; *Hatfield* v. *McWhorter*, 40 Ga. 269. The refusal to deliver a chattel to either of two claimants, simply on the ground of the conflicting claims, followed at once by proceedings to make the claimants interplead, though involving a technical conversion, is not of course within the rule. But beyond that no distinction is made between intentional and unintentional torts. It is obviously just to refuse to a wilful wrongdoer the protection of a bill of interpleader, but where the stakeholder has acted conscientiously throughout and in perfect good faith, and now asks only to be allowed to determine in the surest manner which claimant is entitled, the rule which denies him such relief on the ground of a technical tort seems altogether inequitable. Unfortunately, however, there seems to be no authority on the other side, and the Alabama court was amply justified in following the established rule.

Impossibility of performing Contracts as a Defence. — Impossibility was originally regarded as in no case an excuse for the non-performance of a contract. To this general rule three well-recognized exceptions have arisen. A defence is admitted where, without fault of either of the contracting parties, performance has been prevented by the destruction of the subject-matter of the contract, by a new law forbidding the act promised, or by the sickness or death of one of the parties to a contract for personal services. Further exceptions the English and most of the American courts have not allowed. *Ashmore* v. *Cox*, [1899] 1 Q. B. 436. The New York court, however, has of late been more liberal, and in a somewhat indefinite way has laid down the doctrine that impossibility is an excuse when caused by the non-continuance either of the subject-matter of the contract or of the conditions essential to its performance. *Stewart* v. *Stone*, 127 N. Y. 500; *Dolan* v. *Rodgers*, 149 N. Y. 489; *Herter* v. *Mullen*, 159 N. Y. 28. In line with this rule is a recent decision of the same court. *Buffalo, etc., Land Co.* v. *Bellevue Land, etc., Co.*, 165 N. Y. 247; 59 N. E. Rep. 5. On selling certain land to the plaintiffs, the defendants contracted to build an electric railroad near by, on which they would run cars as often as every half hour, and they further agreed that in case this promise were broken, they would buy back the land. The plaintiffs requested that the defendants be compelled to fulfill this last promise, they not having run cars according to agreement. The court held the defendants' plea, that extraordinary snowstorms had compelled them to suspend operations for a time, was a good defence, on

the ground that even if the contract was absolute in form, yet it contained an implied condition that, if performance were rendered impossible without the defendants' fault, they should be relieved of liability.

The exceptions to the general rule that impossibility of performance is not a defence have crept into the law, not as excuses, but under the cover of implied conditions. In other words, the courts have held that the parties impliedly agreed there should be no performance if such contingencies arose, and so, in truth, no breach of contract resulted. This cannot be regarded otherwise than as pure fiction. As a matter of fact all thought of impossibility of performance is usually absent from the minds of the contracting parties. The defence is an equitable one, and therefore, provided beneficial results follow, the courts would be justified in holding that the implied condition relieves liability, not only where the subject-matter of the contract has been destroyed, but also where the means of performance have ceased to exist; that is, in general terms, wherever performance is rendered impossible without fault of the promisor. Indeed, even if it is insisted that the condition must be one actually intended, it seems more likely that the broader condition would be in the parties' minds than the narrower one, limited to definite objects.

It is usually to the interest of both parties that a contract be carried out. Where performance is prevented by an event, against the occurrence of which neither can reasonably be held to have warranted, both suffer a loss for which neither is responsible. In such circumstances it seems highly unjust to throw all the loss on the one whose performance may happen to have been interfered with. Much wiser would it be to excuse the breach of the express contract, and allow a recovery for benefits actually rendered in a quasi-contractual action. Had this latter remedy been earlier recognized, it is not improbable that the courts would, before this, have admitted impossibility generally as a defence. This result may now be reached, however, by the adoption of the rule suggested by the New York court, which seems not only a natural successor of the previously recognized exceptions, but likewise eminently just.

THE RIGHT TO DISPOSE OF THE BODY BY WILL. — An interesting question of first impression arises in a recent California case as to whether or not one can make a valid testamentary disposition of his body. A testator living with the defendant at the time of his death left a will urging that the manner, time, and place of his burial should be according to the defendant's wishes and directions. Under this clause the defendant claimed the right of burial, and the widow and daughter of the deceased brought suit to obtain possession of the body. In allowing a recovery the court decides that a corpse is in no sense property, that therefore it cannot be disposed of by will, and that the right of burial belongs, in the absence of statutory provision, to the next of kin. *Enos* v. *Snyder*, 63 Pac. Rep. 170 (Cal.). Though it has been held that a corpse is a species of property, *Bogert* v. *Indianapolis*, 13 Ind. 138, such a view, it would seem, is erroneous, and not in accordance with the great weight of authority. *Fox* v. *Gordon*, 16 Phila. Rep. 185. One cannot be indicted for the larceny of a corpse, *Rex* v. *Haynes*, 2 East P. C. 652; nor can the body, as in olden days, be detained for the payment of debts. *Reg.* v. *Fox*, L. R. 2 Q. B. 246. But it is to be noted, though curiously enough it is not